



MAYOR AND COUNCIL AGENDA

NO. 5 DEPT.: Legal/ Community Planning and Development Services DATE: August 12, 2004

Contact: Deane Mellander, Planner III

ACTION: Introduction of ordinance: Zoning text amendment TXT2004-00207:

To amend the Zoning Ordinance to extend the validity period of Use Permits for multi-phased developments; FP Rockville Limited Partnership, applicants.

ACTION STATUS:

FOR THE MEETING OF: 8/18/04

INTRODUCED

PUB. HEARING 4/19/04

INSTRUCTIONS 8/2/04

APPROVED

EFFECTIVE

ROCKVILLE CITY CODE,

CHAPTER 25

SECTION 193

☐ CONSENT AGENDA

RECOMMENDATION: Introduce ordinance for approval with modifications.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

Allows the validity period of use permits for a multi-phase project to be extended beyond the current 8-year maximum.

BACKGROUND: The applicant is proposing this text amendment for the purpose of extending the validity period of Use Permits for a multi-phase project from 8 years to 12 years if 30% of the total square footage has been completed within 8 years, and to 14 years if 60% of the floor area has been completed within 12 years. The applicant, FP Rockville Limited Partnership (Foulger-Pratt) has completed the first of 3 approved buildings along Rockville Pike. Under the current code provision, their use permit approvals for the balance of the project expire on December 2, 2006. As set forth in their request letter, they do not believe they can market the remaining space and build the balance of the project within the current validity period. They are requesting this text amendment in order to continue the project under the current approvals.

The Planning Commission considered this proposal at their meeting on March 24, 2004. The Commission considered the staff recommendation, and heard testimony from the applicant and interested citizens.

The staff recommended approval of the text amendment with modifications. The primary modification recommended by the staff was to limit the applicability of the text amendment to the Town Center Performance District. As submitted, the text amendment would have applied City-wide, with possible affect on other multi-phase projects such as the new development on Choke Cherry

Road at Shady Grove Road.

The Planning Commission voted 4 to 2 to recommend approval of the text amendment with additional modifications. These modifications were to: 1) clarify the language in subsection (b) regarding phases and multiple building development; 2) restore the existing language in subsection (d) regarding commencement of construction within 2 years and allowable extensions; and 3) have the extended validity period apply to projects in all Town Center zones and within the Twinbrook Metro Performance District. Their recommendation is attached. The staff from Planning and Legal developed revised language based on the Planning Commission's recommendation. This revised language was the subject of the public hearing.

Post card notice of the public hearing was mailed to all of the civic associations.

The public hearing was held on April 19, 2004. A summary of the testimony is attached. The Mayor and Council had several questions regarding the effect of the text amendment and procedural issues. Councilmember Hall asked whether there should be a reassessment of adequate public facilities as a result of the text amendment. The applicant noted that traffic generation from the total project was assessed at the time of approval, and is included in background traffic for future project reviews. Councilmember Hall also expressed concern about parking reductions. Mayor Giammo asked what happens if construction begins but stops? In such a case, assuming the use permit validity period has expired, the expiration of the building permit would void the underlying use permit, and the applicant would have to start a new permitting process.

Based on the recommendations of the Planning Commission and the public hearing testimony, a revised draft of the proposed text amendment has been prepared and is attached. The revision incorporates the applicability of the text amendment to all of the Town Center zones, and the Twinbrook Metro Performance District. In addition, the language in subsection "e" has been clarified to make sure that completed buildings under one use permit are not affected if the permit expires before the other buildings in the project have begun.

At the Discussion and Instruction meeting, the Mayor and Council directed staff to add language requiring a traffic reassessment if a multi-building project is not completed within 8 years. The revised ordinance includes new language requiring a traffic study, but staff recommends that developments that currently have a valid use permit be exempted for that requirement. The attached ordinance reflects the modified language including the exemption.

PREPARED BY:

Deane E. Mellander

Deane Mellander, Planner III

8/13/04

Date

APPROVE:

Robert J. Spalding
Robert J. Spalding, AICP, Chief of Planning

8/13/04

Date

APPROVE:

Arthur D. Chambers
Arthur D. Chambers, AICP, CPDS Director

8/13/04

Date

APPROVE:

Catherine Tuck Parrish
Catherine Tuck Parrish, Acting City Manager

8/16/04

Date

LIST OF ATTACHMENTS:

1. Proposed ordinance for introduction.
2. Revised text amendment language – 5/12/04.
3. Summary of public hearing testimony.
4. Planning Commission recommendation.
5. Maps of Town Center and Twinbrook Metro Performance District.

Ordinance No. _____ ORDINANCE: To Grant Text Amendment Application No. TXT2004-00207, as amended, FP Rockville Limited Partnership, Applicant

WHEREAS, FP Rockville Limited Partnership, 9600 Blackwell Road, Suite 200, Rockville, Maryland 20850, filed Text Amendment Application TXT2004-00207, for the purpose of extending the validity period of use permits for a multi-phase project from eight years to 12 or 14 years under certain circumstances; and

WHEREAS, the Mayor and Council of Rockville reviewed the aforesaid application at its meeting of February 9, 2004, and accepted the application for further processing; and

WHEREAS, the Planning Commission reviewed the proposed text amendment application at its March 24, 2004, meeting and recommended approval with modifications, as set forth in a memorandum dated April 1, 2004; and

WHEREAS, pursuant to Article 66B of the Annotated Code of Maryland, the Mayor and Council of Rockville gave notice that a hearing on said application would be held by the Mayor and Council in the Council Chambers at Rockville City Hall on April 19, 2004, at 7:00 p.m. or as soon thereafter as it may be heard; and

WHEREAS, on April 19, 2004, said application came on for hearing at the time and place provided for in said advertisement; and

WHEREAS, the Mayor and Council having considered the text amendment application, and the entire file pertaining thereto, said Mayor and Council having decided that the granting of this application, as amended, in the form set forth below would promote the health, safety and welfare of the citizens of the City of Rockville.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF ROCKVILLE, MARYLAND, that Text Amendment Application No. TXT2004-00207 be, and the same is hereby, granted, as amended, in the form set forth below:

That Chapter 25 of the Rockville City Code entitled "Zoning and Planning" be amended by amending Article V, "Permits", Division 2, "Use Permit," Section 25-193, "Issuance, term, etc." to read as follows:

Sec. 25-193. Issuance; term, etc.

(a) A use permit shall be issued if the Planning Commission, the Mayor and Council, or the Chief of Planning, as the case may be, finds that the use proposed in the application will not:

- (1) Affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
- (2) Be detrimental to the public welfare or injurious to property or improvements in the neighborhood; or
- (3) Constitute a violation of any provision of this Code or other applicable law.

(b) The Planning Commission, the Mayor and Council, or the Chief of Planning may attach such conditions to the approval of the use permit as may be reasonable and necessary to assure that the proposed use will be consistent with the purpose and intent of this chapter. Such conditions of approval may include, but not be limited to, a requirement that plans and programs for soil erosion and sediment control, as set forth in Chapter 19 of this Code, be carried out in conjunction with the use and development of any land for which a use permit is issued[, and a limitation on the time for implementing all phases of a multiple building development use permit. Notwithstanding the provision of subsection (d) hereof, the limitation for commencement for all phases of development for multiple building development use permit, shall not exceed eight (8) years].

(c) No deviation from the plans so approved shall be permitted without approval as provided in this subsection:

- (1) No substantial deviation from plans approved shall be permitted without the approval of a new use permit following the same procedure as in the case of an original application;
- (2) Any deviation not deemed substantial by the Chief of Planning may be considered and acted upon by the Chief of Planning following submission of an application to amend the use permit for insubstantial deviations;

(d) Construction or operation shall commence within two (2) years of the date of issuance or the use permit shall become void. For good cause shown, not more than two extensions not exceeding one (1) year each, may be granted by the Planning Commission, the Mayor and Council, or the Chief of Planning, depending on who has authority over the application.

(e) Notwithstanding compliance with subsection (d) hereof, a use permit shall become void for those buildings within a multiple building development for which construction has not commenced within eight (8) years from the date of issuance of the use permit, except that for any development located within any of the Town Center zones identified in Article 6 of this chapter or within the Twinbrook Metro Performance District the following shall apply:

(1) Where thirty percent (30%) or more of the total approved gross floor area has been constructed within eight (8) years from the date of issuance of the use permit, the use permit shall become void with respect to any building for which construction has not commenced within twelve (12) years from the date of issuance of the use permit.

(2) Where sixty percent (60%) or more of the total approved gross floor area has been constructed within twelve (12) years from the date of issuance of the use permit, the use permit shall become void with respect to any building for which construction has not commenced within fourteen (14) years from the date of issuance of the use permit

(3) Where construction has not commenced on all approved buildings within eight (8) years from the date of issuance of the use permit, no additional construction may occur pursuant to the use permit until a revised transportation report prepared in compliance with the City's then current transportation analysis methodology has been submitted to, and reviewed by, the approving authority. The applicant must comply with any additional off-site traffic mitigation measures as may be required by the approving authority to address any additional traffic impacts identified in the revised transportation report and not addressed in the initial transportation report.

(4) Any development for which a use permit has been issued prior to August 25, 2004 shall not be subject to the requirements of subsection (e) (3).

Nothing herein shall affect the validity of a use permit for a building constructed in accordance with the requirements of the use permit prior to the expiration of the time frames set forth herein.

[(e)] (f) Whenever the Planning Commission, the Mayor and Council, or the Chief of Planning find that any permit previously approved has not been complied with, the Planning Commission, the Mayor and Council, or the Chief of Planning are authorized after written notice by first class mail to the applicant and any persons who appeared before the Commission, or Mayor and Council or entered their appearance in writing prior to the approval of the use permit, and after granting the applicant an opportunity to be heard, suspend or revoke the use permit or take such other action as deemed necessary.

Ordinance No. _____

-4-

NOTE: [Brackets] indicate material deleted
Underlining indicates material added

I hereby certify that the foregoing is a true and correct copy of an
ordinance adopted by the Mayor and Council at its meeting of

Claire F. Funkhouser, CMC, City Clerk

TXT2002-00207 – Revised language per Planning Commission recommendations and Public Hearing comments– 5/12/04

DIVISION 2. USE PERMIT

* * *

Sec. 25-193. Issuance; term, etc.

(a) A use permit shall be issued if the Planning Commission, the Mayor and Council, or the [Director] Chief of Planning, as the case may be, finds that the use proposed in the application will not:

(1) Affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;

(2) Be detrimental to the public welfare or injurious to property or improvements in the neighborhood; or

(3) Constitute a violation of any provision of this Code or other applicable law.

(b) The Planning Commission, the Mayor and Council, or the [Director] Chief of Planning may attach such conditions to the approval of the use permit as may be reasonable and necessary to assure that the proposed use will be consistent with the purpose and intent of this chapter. Such conditions of approval may include, but not be limited to, a requirement that plans and programs for soil erosion and sediment control, as may be recommended by the Soil Conservation Service, be carried out in conjunction with the use and development of any land for which a use permit is issued[, and a limitation on the time for implementing all phases of a multiple building development use permit. Notwithstanding the provision of subsection (d) hereof, the limitation for commencement for all phases of development for a multiple building development use permit, shall not exceed eight (8) years].

(c) No deviation from the plans so approved shall be permitted without approval as provided in this subsection:

(1) No substantial deviation from plans approved shall be permitted without the approval of a new use permit following the same procedure as in the case of an original application;

(2) Any deviation not deemed substantial by the [Director] Chief of Planning may be considered and acted upon by the [Director] Chief of Planning following submission of an application to amend the use permit;

(d) Construction or operation shall commence within two (2) years of the date of issuance or the use permit shall become void. For good cause shown, not more than two (2) extensions not exceeding one (1) year each, may be granted by the Planning Commission, the Mayor and Council, or the Chief of Planning, depending on who has authority over the application.

(e) Notwithstanding the provision of subsection (d) hereof, a use permit shall become void for those buildings within a multiple building development for which construction has not commenced within the following time frames:

(1) eight (8) years from the date of issuance of the use permit; or

(2) for any development located within any of the Town Center zones identified in Article 6 of this chapter or within the Twinbrook Metro Performance District:

a. twelve (12) years from the date of issuance of the use permit, provided that thirty percent (30%) or more of the total approved gross floor area has been constructed within eight (8) years from the date of issuance of the use permit; or

b. fourteen (14) years from the date of issuance of the use permit, provided that sixty percent (60%) or more of the total approved gross floor area has been constructed within twelve (12) years from the date of issuance of the use permit.

[(e)] (f) Whenever the Planning Commission, the Mayor and Council, or the [Director] Chief of Planning find that any permit previously approved has not been complied with, the Planning Commission, the Mayor and Council, or the [Director] Chief of Planning are authorized after written notice by first class mail to the applicant, and any persons who appeared before the Commission, or the Mayor and Council or entered their appearance in writing prior to the approval of the use permit, and after granting the applicant an opportunity to be heard, to suspend or revoke the use permit or take such other action as deemed necessary.

Summary of Public Hearing Testimony

Text Amendment TXT2004-00207

Extend Validity Period of Use Permits

SPEAKER	TESTIMONY	STAFF COMMENTS
Erin Girard & Clayton Foulger	Wants a minor change to the language of subsection "e", per discussion with Legal. The proposal is similar to the County's process, which has a 12-year limit on approvals, with possible extensions for up to 18 years. Traffic that will be generated by the project has already been accounted for in background counts. This is a "smart growth" project, close to Metro. The existing parking garage is intended to serve the entire project. The applicant/developer has done everything reasonable to development the project, including pursuit of the GSA proposal. Mr. Foulger also notes that the City asked that all 3 buildings be included for purposes of applying for public improvement funds, and reiterates his long-term contribution to the Town Center.	Staff has prepared a revised version of the proposed language, based on recommendations from the Planning Commission and comments from the public hearing.
William Meyer	Recommends expanding the applicability to the Twinbrook area and the Stonestreet portion of the Town Center. The proposal is tailored to one developer, who can't lease due to a lack of parking. Will the Town Square project accommodate the needed parking? Why not let the permits expire and see what new ideas emerge?	The applicant's project has achieved the maximum amount of on-site parking, considering the limits on excavation and added decks. This includes the approved parking reduction. Town Square will add additional public parking.
Harry Thomas	Does not support the proposed amendment. Suggests even shortening the validity period to 5 years with a 3-year extension available. Asks if this proposal would apply to the Uniwest site on Twinbrook Parkway.	If applicability is limited to the Twinbrook Metro Performance District, the Uniwest site would not qualify since it is outside the district boundary; also, it is not a multi-building project.
David Hill	Concern about unlimited extensions-- Tower Oaks never expires, and we have mortgaged the traffic from it. Fortune Parc will add more traffic. Suggests that instead of extensions, that the City approve a concept plan, and have the developers come back for public extension approval—don't allow long term extensions.	Tower Oaks and other CPD's are in a different category than is the case with a single project use permit approval. Note that their background traffic is already counted.



City of Rockville

MEMORANDUM

April 1, 2004

TO: Mayor and Council

FROM: Planning Commission

SUBJECT: Planning Commission Recommendation on Zoning Text Amendment TXT2003-00207, to Extend the Validity Period for Use Permits for Multi-Phase Developments.

At its meeting on March 24, 2004, the Planning Commission considered proposed Zoning Text Amendment No. TXT2003-00207. This text amendment would extend the time required to implement the Use Permit for a multi-phase development. The current limit is 8 years. The proposed text amendment would allow up to 12 years if 30 percent of the gross floor area were built, and up to 14 years if up to 60 percent of the floor area were built.

The Commissioners were given a presentation by the staff, and heard testimony from the applicant and citizens.

The Commissioners noted that the modified language proposed by the staff deleted the extension provision for commencing construction contained in the current language of subsection (d) of Section 25-193. Staff agreed that this was an oversight and should be corrected. The staff also recommended that the text amendment only be effective within the Town Center Performance District, rather than be applicable city-wide.

Commissioner Britton supports the modified text amendment, and the narrower application to the Town Center Performance District. He believes this proposal makes sense from a public policy perspective, but it should not be extended throughout the City.

Commissioner Ostell is concerned about limiting the applicability of the proposal. It appears that the proposed language is intended to apply only to the Foulger-Pratt property. Simply being too close to Metro may not be the entire answer. Limiting Use Permits does have a valid purpose to limit tying up land with non-viable projects. Perhaps the City should take a more rationale approach to the entire code.

Commissioner Holtz is concerned about the parking issues in the Town Center. It appears that Foulger-Pratt is relying on the proposed Parking District to meet its own parking needs. He's

unsure about giving a carte blanche approval, but will reluctantly support the modified text amendment.

Commissioner Mullican supports the concept of the text amendment. The Foulger-Pratt project is one of the nicest in the City and should be encouraged. She notes that the proposed time extensions closely track the validity periods in the County's Adequate Public Facilities program. She would support extending the applicability of the text amendment to the entire Town Center Planning Area as well as the Twinbrook Metro Performance District.

Commissioner Johnson has mixed feelings about the proposal. He supports and encourages the applicant, and public policy supports the text amendment near the Metro station. He does not like long time extensions, and does not support extending applicability to the entire City. He could consider supporting extending the applicability to the east along Stonestreet Avenue, and to the Twinbrook Metro Performance District.

Commissioner Hilton is reluctant to do spot zoning, and has a concern about impact on adequate public facilities over the long term. He supports extending the applicability to the Twinbrook Metro Performance District in order to enhance the City's competition with the County in that area. He is also concerned about the lack of clarity in the existing language referring to "phases" and multiple building development.

Commissioner Britton moved and Commissioner Holtz seconded a motion that the proposed text amendment be approved with the following additions and modifications:

1. Clarify the language in subsection (b) regarding phases and multiple building development;
2. Restore the existing language in subsection (d) regarding commencement of construction within 2 years and allowable extensions;
3. Have the extended validity periods apply to all Town Center Zones, and to developments within the Twinbrook Metro Performance District.

The Planning Commission therefore recommends approval of the text amendment with modifications noted above by a vote of 4 to 2 with one absent.

Commissioner Mullican voted against the motion solely because she believes the text

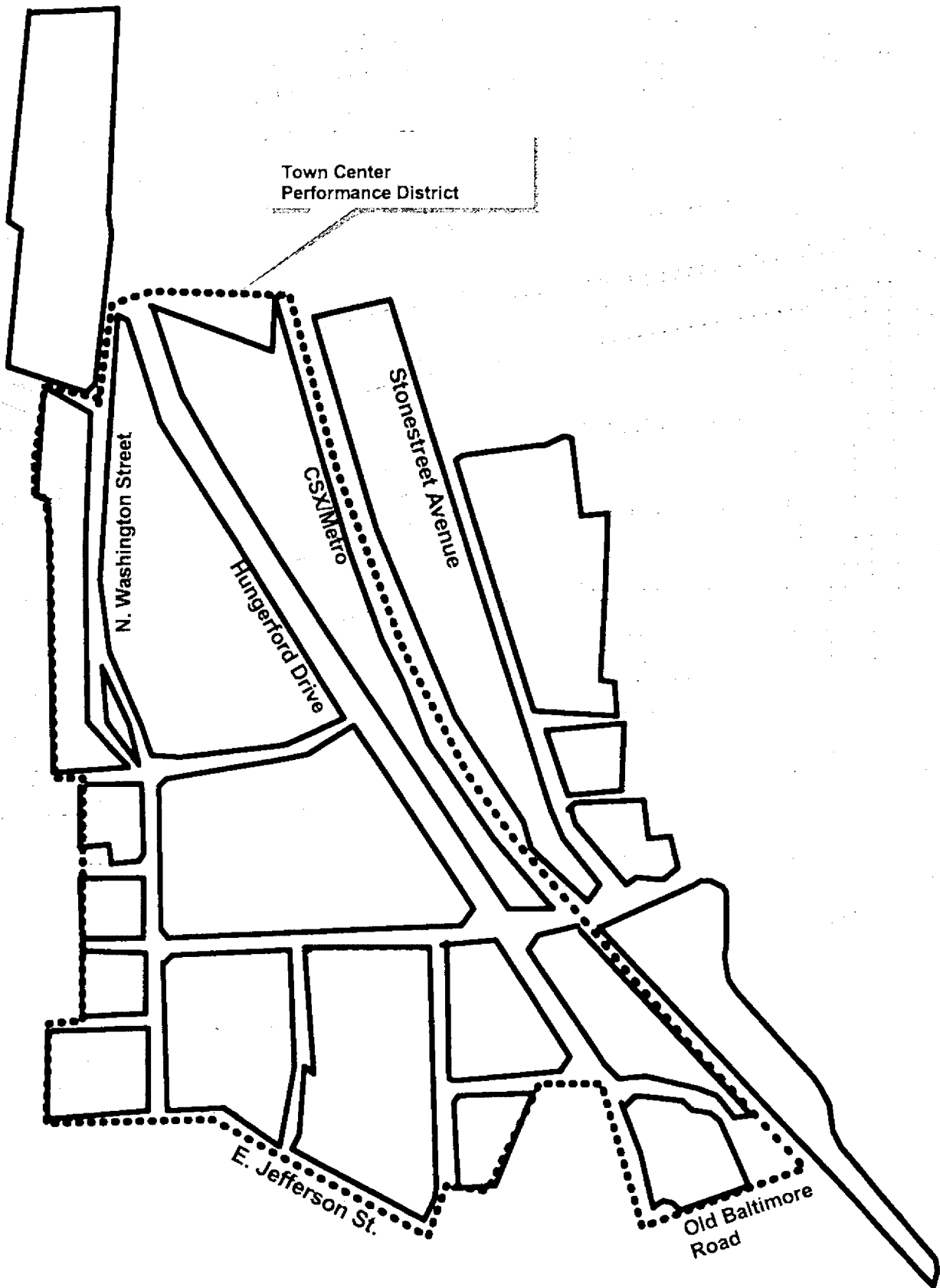
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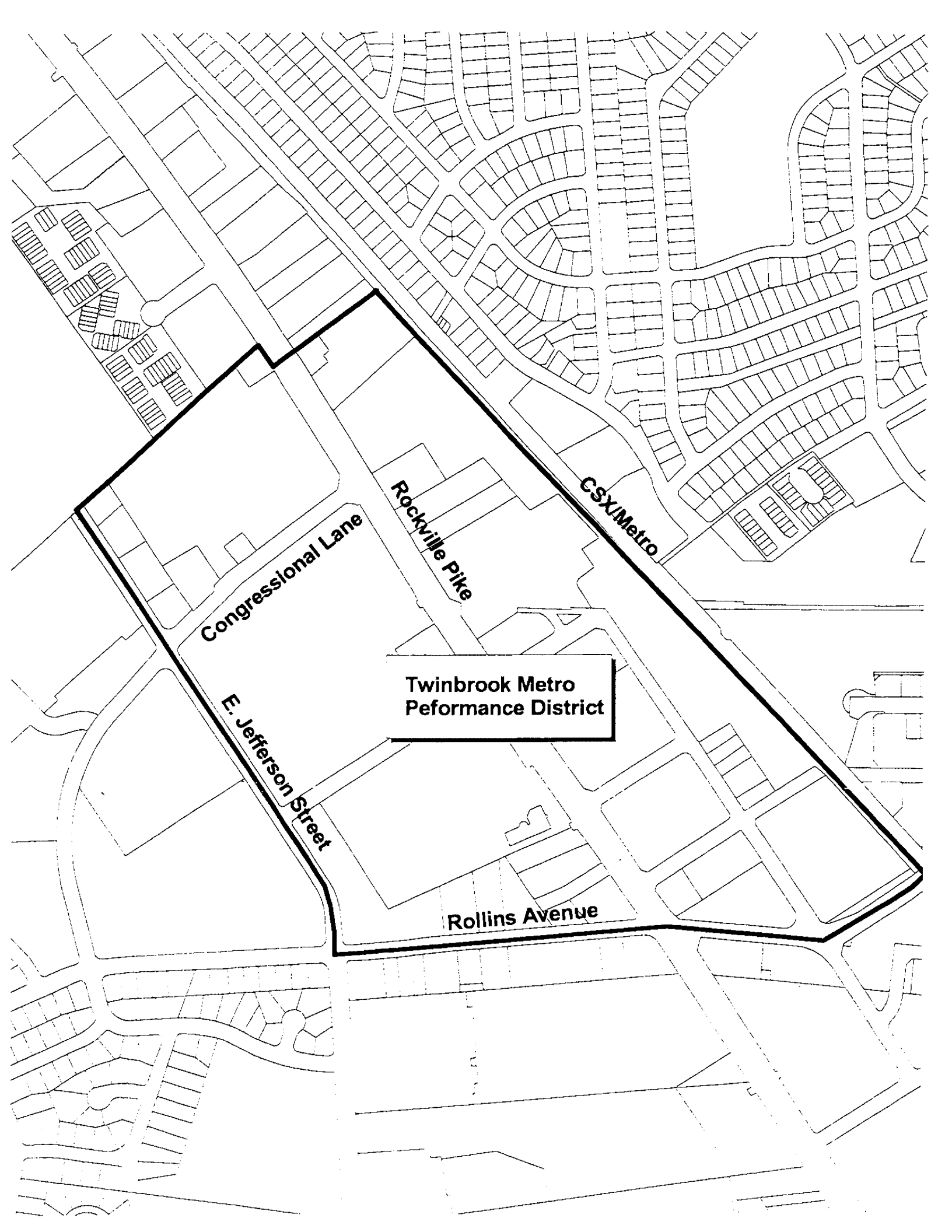
amendment should be applicable throughout the Town Center Planning Area, rather than be limited in scope.

Commissioner Ostell voted against the motion for her concerns expressed above.

DM

cc: Planning Commission





Congressional Lane

Rockville Pike

CSX/Metro

Twinbrook Metro
Performance District

E. Jefferson Street

Rollins Avenue